

(SPACE BELOW PROVIDED FOR FILING STAMP ONLY)

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2 **HUB LAW OFFICES**
3 711 Sir Francis Drake Boulevard
4 San Anselmo, California 94960
5 (415) 258-0360

6 FORD GREENE, Bar # 107601

7 Attorney for Defendant
8 **GERALD ARMSTRONG**

FILED

SEP 15 1995

HOWARD HANSON
MARIN COUNTY CLERK
by J. Steele, Deputy

RECEIVED

SEP 15 1995

HUB LAW OFFICES

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF MARIN

11 CHURCH OF SCIENTOLOGY INTERNATIONAL,))
12 a California not-for-profit))
13 religious corporation,))

14 Plaintiff,))

15 vs.))

16 GERALD ARMSTRONG; MICHAEL WALTON;))
17 THE GERALD ARMSTRONG CORPORATION,))
18 a California for-profit))
19 corporation; DOES 1 through 100,))
20 inclusive,))

21 Defendants.))

No. 157 680

ARMSTRONG'S EX PARTE
APPLICATION FOR ORDER
ALLOWING FILING OF
OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT/
ADJUDICATION; DECLARATION
OF FORD GREENE; ORDER

Date: September 15, 1995
Time: 9:30 a.m.
Dept: One
Trial Date:

22 TO: CHURCH OF SCIENTOLOGY INTENTIONAL AND ITS ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE that on September 15, 1995, At 9:30 a.m., in Department 1 of the
24 above-entitled Court, located at the Hall of Justice, Marin County Civic Center, San Rafael,
25 California, defendant Gerald Armstrong, by and through his attorney of record, Ford Greene, will
26 seek an ex parte order allowing him to file and personally serve oppositions to the pending motions
27 for summary judgment/adjudication on or before 10:00 a.m. on Monday, September 18, 1995.

28 This ex parte application is based upon the ground that it would be unfair to preclude


COPY

1 Armstrong from opposing said motions particularly when the grant thereof would have the effect of
2 depriving Armstrong of important and fundamental rights.

3 The legal basis for the instant application includes, but is not limited to California Rule of
4 Court 379, and Local Rule 2.10.

5 This ex parte application is based upon this notice, the attached Declaration of Ford Greene,
6 the court's files and records in this case and such other material as is presented in support of the
7 application.

8 DATED: September 15, 1995

HUB LAW OFFICES
By: 
FORD GREENE
Attorney for Defendant
GERALD ARMSTRONG

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1 DECLARATION OF FORD GREENE

2 FORD GREENE declares:

3 1. I am an attorney licensed to practice law in the Courts of the State of California and
4 am the attorney of record for GERALD ARMSTRONG, defendant herein. I previously represented
5 Armstrong in this litigation, however, on February 23, 1995, I substituted out of the case with
6 Armstrong thereafter appearing *in pro per* until now.

7 2. On September 14, 1995, defendant Armstrong applied *ex parte* to the Court for an
8 Order allowing him to file oppositions to the two pending motions for summary adjudication, and
9 for an Order allowing said oppositions to be filed and personally served on or before 10:00 a.m. on
10 September 18, 1995. Judge Gary W. Thomas indicated his inclination to deny defendant's
11 application for both orders and continued the hearing to September 15, 1995 for the purpose of
12 clarifying whether or not defendant Armstrong had already submitted oppositions in which case the
13 grant of the Orders sought herein would unfairly allow Armstrong "two bites of the apple."

14 3. The procedural history of the two pending motions for summary adjudication is as
15 follows:

16 First C.C.P. section 437c Motion

17 a. Plaintiff's motion for summary adjudication of the twentieth cause of action seeking a
18 permanent injunction was filed on February 23, 1995 noticing a hearing for March 31, 1995. It
19 included within its scope a third-party non-profit corporation, FactNet, that was managed by one
20 Lawrence Wollersheim;

21 b. On March 10, 1995 the Court granted Armstrong's *in pro per ex parte* application to
22 continue the hearing on the summary adjudication motion re the twentieth cause of action for two
23 weeks to April 14, 1995;

24 Second C.C.P. section 437c Motion

25 c. Plaintiff's motion for summary adjudication of the thirteenth, sixteenth, seventeenth
26 and nineteenth causes of action was filed on March 17, 1995.

27 d. On March 29, 1995 the Court granted Armstrong's *in pro per ex parte* application to
28 continue the hearing on the summary adjudication motion re the thirteenth, sixteenth, seventeenth,

1 nineteenth and twentieth causes of action to April 21, 1995;

2 e. On April 7, 1995 the Court denied Armstrong's *in pro per ex parte* application to
3 continue the hearing on the summary adjudication motion re the thirteenth, sixteenth, seventeenth,
4 nineteenth and twentieth causes of action.

5 The Wollersheim Declaration

6 f. Included in Scientology's proposed Order of Permanent Injunction on the twentieth
7 cause of action was the following language:

8 "1. Remove all information concerning Scientology, the Church and/or any person
9 referred to in paragraph 1 of the "Mutual Release of All Claims and Settlement
10 Agreement" of December, 1986, from any and all data bases, electronic or otherwise,
11 within the possession, custody or control of FACTNet;"

12 f. On April 10, 1995, Armstrong filed the Declaration of Lawrence Wollersheim in an
13 effort to protect FactNet from being subjected to inclusion within any court ordered permanent
14 injunction. This is the only paper that Armstrong has filed in opposition to the motions for summary
15 adjudication. He has filed no separate statements and no points and authorities. Therefore,
16 Armstrong's sole submission is legally insufficient and is thus an ineffective opposition to the
17 pending motions.

18 Armstrong's Bankruptcy Filing

19 4. On April 19, 1995, Armstrong sought the protection of the bankruptcy court which
20 issued an automatic stay of the instant action.

21 5. On April 20, 1995, this Court ordered the instant action stayed and set a status
22 conference for August 3, 1995.

23 Current Status

24 6. On August 3, 1995, this Court set the hearing on the two pending summary
25 adjudication motions for September 29, 1995.

26 7. A hearing on plaintiff's two motions for summary judgment/adjudication is set herein
27 on September 29, 1995. Defendant's opposition papers to both motions shall therefore be filed and
28 served on or before September 15, 1995.

1 Armstrong's Need For Relief

2 8. I am informed and believe that the hearing on the motion was previously set, but not
3 heard because defendant had filed for relief in the bankruptcy court which had issued a stay to this
4 court. I am further informed and believe that before the stay issued from the bankruptcy court, Mr.
5 Armstrong was in pro per and, but for an effort to prevent the Court from bringing FactNet within
6 the scope of any permanent injunction failed to timely file his opposition papers to the then-pending
7 C.C.P. section 437c motions. Thus, he is technically is default with respect thereto.

8 9. As part of Armstrong's bankruptcy litigation, on May 15, 1995, he filed and served
9 upon Church of Scientology International a separate statement and supporting evidence that was
10 what he would have liked to have filed in this Court in opposition to the then-pending C.C.P.
11 section 437c motions, but did not. Thus, for four months, CSI has been on notice as to the factual
12 basis for Armstrong's opposition to said motion. (Factual support in this regard is set forth in the
13 Declaration of Gerald Armstrong which is attached hereto.) Thus, Scientology will not be
14 prejudiced by allowing Armstrong a full opportunity to litigate his opposition to the pending
15 summary adjudication motions.

16 10. I have personally reviewed the factual basis solely gathered by defendant Armstrong
17 which was served on Scientology on May 15, 1995, and upon which he bases his oppositions to the
18 currently pending summary judgment motions. I believe them to be meritorious. The essence of
19 such merit is that as part of the settlement agreement, Scientology promised not to engage in any
20 further fair game activities against Armstrong which included a promise not to reveal any facts about
21 Armstrong relating to the time period preceding the settlement. Prior to any claimed breach of the
22 agreement by Armstrong, Scientology repeatedly breached its promises to Armstrong by publishing
23 and distributing false statements about Armstrong to the courts and to the press in the United States
24 and abroad. **These facts have not previously been presented to this Court.** Therefore, as to the
25 enforcement of the contract, Armstrong is prepared to present a factually based defense at least on
26 the grounds of fraud and on the failure of consideration as a discharge of Armstrong's duty to
27 perform. Separate Statements and Evidence in Support thereof in opposition to the pending motions
28 are presently completed and ready for filing (as mentioned Scientology has had service of these

1 papers since May 15, 1995).

2 11. If Armstrong cannot file these papers he will be prejudiced because he will have been
3 deprived of the opportunity to participate in a hearing the likely result of which will be orders
4 seriously impacting the fundamental constitutional rights to free speech, freedom of religion and the
5 right to employment.

6 12. The only papers in opposition that are not prepared at the time of the submission of
7 this *ex parte* application are the opposing points and authorities.

8 13. It will be extremely difficult, if not impossible, for me to adequately prepare both
9 oppositions by today. Mr. Armstrong, however one may consider him, is deserving of an adequate
10 defense. His rights, which hang in the balance, are as important as any which are fundamental to
11 our democracy.

12 14. I have been reluctant to accept further representation in this case because it is pro
13 bono, however, I believe that both the issues and rights at stake are fundamental. In addition, I
14 believe that Mr. Armstrong should not be compelled to endure any attempt at the wholesale
15 destruction of his rights without the benefit of being represented by a lawyer. Thus, I request a brief
16 extension of time so that I can properly do my job.

17 Relief Requested

18 15. With the foregoing in mind, I would like two orders. First, I would like an order
19 allowing Armstrong to file an opposition to the pending summary adjudication motion. Second, I
20 would like an order allowing such opposition to be filed and personally served on Mr. Wilson's
21 office by 10:00 a.m. on September 18, 1995.

22 Request to Preserve Appellate Record

23 16. Finally, if the Court denies Armstrong permission to file any papers in opposition to
24 the motions, he would like permission to file or lodge with the Court today the papers that he would
25 have filed in opposition to the motions so that the record is complete for the purposes of appeal.

26 17. I have given notice of the present application for *ex parte* orders to counsel for
27 plaintiff in the following manner:

28 By advising counsel after yesterday's *ex parte* application that an additional

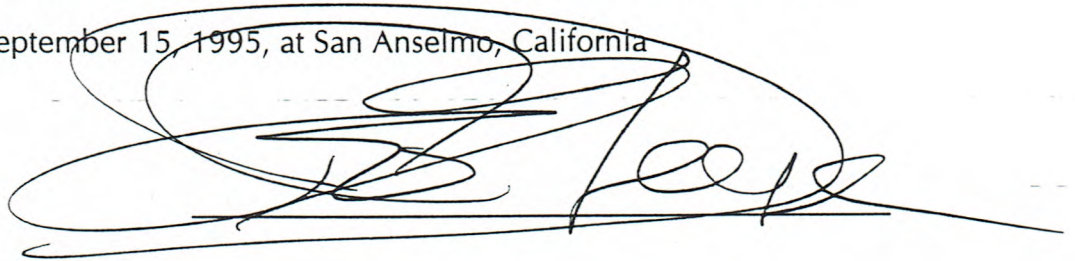
1 application would be made today.

2 I received the following response to said notice: Mr. Wilson will appear.

3 Under penalty of perjury pursuant to the laws of the State of California I hereby declare that
4 the foregoing is true and correct according to my first-hand knowledge, except those matters stated
5 to be on information and belief, and as to those matters, I believe them to be true.

6 Executed on September 15, 1995, at San Anselmo, California

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A large, stylized handwritten signature in black ink, written over the text of line 6. The signature is highly cursive and appears to be a name like "John Wilson".

DECLARATION OF GERALD ARMSTRONG

I, Gerald Armstrong, declare:

1. I have personal knowledge of the facts set forth in this declaration and could competently testify thereto if called as a witness.

2. On April 19, 1995, I filed a petition for Chapter 7 bankruptcy in the Northern District, Case No. 95-10911 aj. On April 26, 1995 Scientology, filed a motion for relief from the automatic stay. One of its claims in its motion was that all of my defenses had been eliminated by the State Court. They had not been at any time. I had simply not had the resources or time to assemble the mass of documentation and prepare my separate statements and oppositions to Scientology's two summary adjudication motions; and the State Court had not granted my request for adequate time in April, 1995 to do so.

3. On May 15, 1995, therefore, in order to show that I had real defenses, which had not been adjudicated, and in order to show that I had put enormous effort into assembling the evidence to support these defenses, I filed my opposition to Scientology's relief from stay, which included as evidence my separate statement of disputed and undisputed facts in opposition to Scientology's summary adjudication motion of its twentieth cause of action of its second amended complaint, which is 134 pages in length, plus all my evidence cited to in the separate statement. This separate statement and all of the evidence cited to therein were served on Scientology on May 15. A copy of the proof of service showing service of my opposition and evidence containing all these papers is appended hereto as Exhibit A.

4. The evidence which I will use to support my oppositions

1 to Scientology's two pending summary adjudication oppositions is
2 identical to the evidence served on Scientology on May 15. The
3 separate statement in opposition to Scientology's motion for
4 summary adjudication of its twentieth cause of action is identical
5 to that served on Scientology on May 15. The separate statement
6 in opposition to Scientology's motion for summary adjudication of
7 its thirteenth, fourteenth, seventeenth and nineteenth causes of
8 action, along with one declaration without exhibits which is
9 specific to that motion, has not been served on Scientology. The
10 bulk of that separate statement, however, is identical to the
11 separate statement in opposition to Scientology's motion for
12 summary adjudication of its twentieth cause of action.

13 I declare under the penalty of perjury under the laws of the
14 State of California that the foregoing is true and correct.

15 Executed at San Anselmo, California, on September 14, 1995

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GERALD ARMSTRONG

PROOF OF SERVICE

I am employed in the county of Marin, State of California. I am over the age of eighteen years and not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California 94960. I served the foregoing document(s) described as:

**GERALD ARMSTRONG'S DECLARATION IN OPPOSITION TO
SCIENTOLOGY'S MOTION FOR RELIEF FROM STAY; GERALD
ARMSTRONGS EVIDENCE OPPOSITION TO SCIENTOLOGY'S MOTION
FOR RELIEF FROM STAY - VOLUMES I - VII**

on the following persons on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Laurie J. Bartilson, Esquire
BOWLES & MOXON
6255 Sunset Boulevard, Suite 2000
Los Angeles, CA 90028

Jeffry G. Locke, Trustee
P.O. Box 488
Kentfield, CA 94914-0488

- (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.
- (Personal) I caused said papers to be personally served on the office of counsel.
- (State) I declare under the penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: May 17, 1995

